

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

IN RE WASHINGTON MUTUAL  
MORTGAGE BACKED SECURITIES  
LITIGATION,

This Document Relates to: ALL CASES

Master Case No. C09-037 MJP

[Consolidated with: Case Nos.  
CV09-0134 MJP, CV09-0137 MJP, and  
CV09-01557 MJP]

**SUPPLEMENTAL CONFIDENTIALITY  
STIPULATION AND ORDER  
RELATING TO LOAN FILE  
PRODUCTIONS**

**NOTED ON MOTION CALENDAR:  
OCTOBER 19, 2011**

**WHEREAS**, Plaintiffs have requested that JPMorgan Chase Bank, National Association (“JPMC”) produce certain documents relating to the origination and servicing of individual mortgage loans (hereinafter “loan file documents”), and

**WHEREAS**, the requests encompass more than 14,000 mortgage loans, and such documents are extremely voluminous, sometimes totaling more than a thousand pages for a single loan, and

1           **WHEREAS**, a comprehensive review of remaining documents for privileged  
2 information would significantly delay and increase the cost of production with little or no  
3 benefit to any party to this action, and  
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5           **WHEREAS**, the parties to this action have agreed that it is in their interests to  
6 expedite production of the documents,

7           **NOW, THEREFORE**, subject to the approval of the Court, JPMC and the  
8 undersigned parties (collectively, the “Parties” and each a “Party”), by and through their  
9 undersigned counsel, hereby stipulate and agree to the following provisions for the protection  
10 of information that may be produced by the Parties in response to requests for loan file  
11 documents.

13           1.       Nonparty Borrower Information. For purposes of this Stipulation and Order,  
14 “Nonparty Borrower Information” shall mean any information that constitutes “nonpublic  
15 personal information” within the meaning of the Gramm Leach Bliley Act, 15 U.S.C. § 6802,  
16 et seq. and its implementing regulations, including, but not limited to, any portion of a  
17 mortgage loan file or other document which includes financial or credit information for any  
18 person (including any credit history, report or score obtained on any such person to determine  
19 the individual’s eligibility for credit) together with personally identifiable information with  
20 respect to such person, including, but not limited to, name, address, Social Security number,  
21 loan number, telephone number, or place or position of work. As set forth in Paragraph 4, this  
22 Stipulation and Order authorizes the disclosure of such Nonparty Borrower Information in  
23 this action.

27           2.       Non-waiver of Privileges. This Stipulation and Order is entered pursuant to  
28 Federal Rule of Evidence 502(d). In order to allow for expeditious production of loan file

1 documents, a Producing Party may, at its sole option, produce such materials without detailed,  
2 or any, review to determine whether privilege or other privilege or immunity from discovery  
3 applies to some of the documents produced. In accordance with Federal Rule of Evidence  
4 502(d) and other applicable Rules, disclosure in the course of discovery of any document or  
5 information shall not be deemed to waive—in this litigation or in any other Federal or State  
6 proceeding—any applicable privilege or immunity from discovery that would otherwise  
7 attach to the document or information produced or to other documents or information,  
8 including without limitation, the attorney-client privilege, the work-product doctrine, the joint  
9 defense or common interest privilege, personal privacy protection, the bank examination  
10 privilege and the deliberative process privilege, regardless of the extent (if any) to which the  
11 producing Party has reviewed the document or information for privilege or other protection.  
12 Likewise, where a Party has produced loan file documents in another action, investigation, or  
13 other proceeding without detailed, or any, review to determine whether privilege or other  
14 immunity from discovery applies, no Party shall claim that production of such documents in  
15 such other action, investigation, or other proceeding constitutes a waiver of any privilege or  
16 protection with respect to the documents produced.

20           3.       Clawback of Protected or Erroneously Produced Documents. The following  
21 provision applies to all loan file documents produced in this action, and supersedes the  
22 Stipulated Protective Order and Stipulated Order Regarding Clawback of Inadvertently  
23 Produced Documents dated November 24, 2010 (Doc. 213), with regard to the production of  
24 loan file documents, to the extent this provision and that Order conflict. Pursuant to Fed. R.  
25 Evid. 502(d), if a Party (hereinafter, “Producing Party”) at any time notifies any other Party  
26 (hereinafter, “Receiving Party”) that the Producing Party, for any reason, disclosed loan file

1 documents that are protected from disclosure under the attorney-client privilege, work product  
2 doctrine, and/or any other applicable privilege or immunity from disclosure, or the Receiving  
3 Party discovers such disclosure (in which case the Receiving Party shall give the Producing  
4 Party prompt notice), the disclosure, pursuant to Rule 502(d), shall not be deemed a waiver –  
5 in this litigation or in any other proceeding, including in Federal or State proceedings – of the  
6 applicable privilege or protection.

7       The Receiving Party shall upon request immediately return to the Producing Party or  
8 destroy all summaries or copies of such loan file documents, shall provide a certification of  
9 counsel that all such disclosed materials have been returned or destroyed, and shall not use  
10 such items for any purpose until further order of the Court. In all events, such return or  
11 destruction and certification must occur within five (5) business days of receipt of the request.  
12 Within ten (10) business days of the notification that the disclosed materials have been  
13 returned or destroyed, the Producing Party shall produce a privilege log with respect to the  
14 disclosed materials. The return of any Discovery Material to the Producing Party shall not in  
15 any way preclude the Receiving Party from moving the Court for a ruling that the disclosed  
16 information was never privileged; however, the Receiving Party cannot assert as a basis for  
17 the relief it seeks the fact or circumstance that such privileged documents have already been  
18 produced. Alleged privileged documents shall remain protected against disclosure and use  
19 during the pendency of any dispute over their status. Nothing in this Stipulation and Order  
20 shall affect any Party's right to withhold from disclosure documents or information that are  
21 privileged or otherwise protected from disclosure.

22       4.       Disclosure of Nonparty Borrower Information. To the extent any federal or  
23 state law or other legal authority governing the disclosure or use of Nonparty Borrower

1 Information (hereinafter, "Nonparty Borrower Information Law") permits disclosure of such  
2 information pursuant to an order of a court, this Stipulation and Order shall constitute  
3 compliance with such requirement. To the extent any Nonparty Borrower Information Law  
4 requires a Party to obtain a court-ordered subpoena or give notice to or obtain consent, in any  
5 form or manner, from any person or entity before disclosure of any Nonparty Borrower  
6 Information, the Court finds that, in view of the protections provided for the information  
7 disclosed in this Stipulation and Order, the volume of documents to be produced and the  
8 ongoing oversight of the Court, there is good cause to excuse such requirement, and this  
9 Stipulation and Order shall constitute an express direction that the Party is exempted from  
10 obtaining a court-ordered subpoena or having to notify and/or obtain consent from any person  
11 or entity prior to the disclosure of Nonparty Borrower Information. To the extent that any  
12 Nonparty Borrower Information Law requires that any person or entity be notified prior to  
13 disclosure of Nonparty Borrower Information except where such notice is prohibited by court  
14 order, the Court directs that, in view of the protections provided for the information disclosed  
15 in this Stipulation and Order, the volume of documents to be produced and the ongoing  
16 oversight of the Court, the parties are explicitly prohibited from providing such notice;  
17 provided, however, that this Stipulation and Order shall not prohibit either Party from  
18 contacting any person or entity for any other purpose. Any Producing Party may seek  
19 additional orders from this Court that such Party believes may be necessary to comply with  
20 any Nonparty Borrower Information Law. Nothing in this Order shall prohibit a party from  
21 designating any documents as CONFIDENTIAL under the Stipulated Protective Order and  
22 Stipulated Order Regarding "Clawback" of Inadvertently Produced Documents (Doc. 213).  
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5.        **Binding Effect.** This Stipulation shall bind the Parties. The Parties understand that JPMC will seek an order from the Court approving the Stipulation and implementing its terms. Any breach of this Stipulation thereafter shall be subject to remedies for violations of a court order.

6. Execution of Agreement; Amendments. This Stipulation may be executed by facsimile, electronically and in counterparts. This Stipulation may be amended with the written consent of the Parties.

Respectfully submitted,

Dated: October 19, 2011

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10 SO ORDERED.  
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12 Dated: \_\_\_\_\_  
13 MARSHA J. PECHMAN  
14 UNITED STATES DISTRICT JUDGE  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on the 19th day of October, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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